

1680

**The Case of *Elizabeth Fenton* Widow, the Relict and Administratrix, of *Richard Fenton* Gent. deceased Respondent to the Petition of *William Crabb* and *Tho. Goldsmith* Appellants, Humbly offered to the Consideration, of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled.**

**T**HE said *Richard Fenton* being Owner of the 3 parts of the Ship *Rainbow* of *Bristol*, whereof *William Crabb* and *Thomas Goldsmith*, (now Appellants from a Decree of the High Court of *Chancery*) And *Richard Crabb*, *Alexander Gray*, and *Henry Haines*, had each of them one 8th. part. They together in the year 1655. let the Ship to Freight, on a Voyage to *Virginia*; which she performed, and returned safe to *Bristol*, where the Appellants and *Richard Crabb* received her Freight, and other Profits arising by the said Voyage, 3 parts whereof Appertained to the aforesaid *Richard Fenton*.

The said Part-Owners gave no Account of the aforesaid Freight and Profits to the said *Fenton*, but instead thereof set forth the said Ship a second Voyage to *Virginia*: Where to she was Freight, and set Sail, made her Voyage, and returned safe; but before such her return the said *Richard Fenton* dyed intestate. After whose decease Letters of Administration of his Goods and Chattels were granted to *Elizabeth* his Wife, whereby she became justly intituled to all his Personal Estate: And particularly to 3 parts of the Freight of the Ship *Rainbow*, for the aforesaid two Voyages. All which the said Part-Owners Received.

*Elizabeth Fenton* demanded her Husbands and Intestates proportion of the said Ship, for the aforesaid Two Voyages from the Appellants, and other the Part-Owners; who refused to Accompt for the same, pretending that one *Stafford* was employed by all the Owners, to Let the said Ship and receive the Freight thereof, which he had done, and therefore was only Accountable for the same. And thereupon prevailed with the said *Elizabeth Fenton* to referre the aforesaid matters in controversie to Arbitration. And Arbitrators for that purpose were appointed, before whom (when the said *Elizabeth* was absent, and could not Attend) the Books of Account of the aforesaid *Stafford* were produced, relating to the aforesaid Ship, and two several Freights. And they thereupon (by surprize upon the said *Elizabeth Fenton*) made their Award, whereby they directed and ordered only 14 l. to be paid her for her proportion, of the Profits and Freight of the aforesaid two Voyages, (when there was 1000 l. due.) And the Appellants having Lett out the Ship a third Voyage, at 24 l. 7 s. 6 d. per Month. in which Voyage she continued about 16 Months. Attached the said *Fentons* proportion thereof to compell her to submit to the said Award.

Billary 1660.

Thereupon she preferred her Bill in the High and Honourable Court of *Chancery*, to have an Accompt of the said three Voyages, and to set aside the undue Award made as aforesaid, which cause came to be heard 12 July 17 Car. nunc.

Whereupon the aforesaid Award was set aside, and Account directed to be taken by a Master, who (being assisted by Merchants) after Examination of Witnesses, and hearing Council, reported, 747 l. 16 s. 6 d. due to the Respondent, *Elizabeth Fenton*.

The Appellants prevailed for a Reference; upon which the Report aforesaid was confirmed, and afterwards decreed, and the decree Signed, and Enrolled.

Whereupon the Appellants and *Richard Crabb* aforesaid, brought their Bill of review, assigning the same Errors they now do in their Appeal to this most Honourable House, upon which they obtained an Order that paying 247 l. 16 s. 6 d. And securing 500 l. more (remainder of the 747 l. 16 s. 6 d. decreed) all proceeding upon the said Decree should be stayed.

To which Bill of review the said *Elizabeth* put in her Answer, and Witnesses being thereupon examined, and publication past, the Cause also came to be heard on the 22 April 22 Car. nunc. Upon which hearing the Court proposed, That the said *Fenton* should go back to the first Referrees to review the account. Or that she should pay back the 247 l. 16 s. 6 d. aforesaid (which was impossible for her to do) And then the Court would name new Referrees.

The said *Elizabeth Fenton* being necessitated to make Choice of one of these two proposals, chose to go back to the former Referrees, who made their second Award without hearing the Respondent, which was afterwards set aside also; and a second reference made to a Master to take an Account of the aforesaid three Voyages, which reference being transferred to Sir *John Coell* be proceeded therein, and 10 April. 1675. made his Report, That the Respondent declaring her unwillingness that *Stafford* should be employed, and that the Appellants had promised she should have a just Account of the aforesaid three Voyages, and that no wrong should be done her, but that she should receive her proportion of the Profits of the said Ship, And that the Appellants undertook the management thereof; after which he proceeded upon the said Accounts, stated the same, and Reported above 500 l. due to the Respondent *Elizabeth*.

July 23, 1675. The Appellants procured a new Reference, with Order, that the aforesaid *Stafford* should be Examined, which was done accordingly: upon which, the said Master made another Report, and made some further Abatement by the Respondents consent in order to an Accommodation.

To which Report, though in their Favour, the Appellants took Exceptions.

Feb. 26. 27 Reg. nunc. The said Exceptions coming to be Argued, the Lord Chancellor approved, and Confirmed what the Master had done in Rejecting *Staffords* Evidence; and upon some of the Exceptions, referred it back to the same Master, who having the Assistance of many Eminent Merchants in *London*,

May 23, 1677. Made his Third Report; To which the Appellants excepting, many Hearings were thereupon had, and a Re-reference made, with Direction for the said Master to State the Particulars of the Account, with the Values of the Cargo; which being done, he made his Fourth Report, and thereby certified 555 l. 8 s. 5 d. 1/2 due to the Respondent. To which Report, the Appellants also Excepted.

Feb. 20. 1678. The Exceptions being Argued, were Over-ruled; and the Report confirmed by Decree of the Court, since Signed and Inrolled.

From which Decree, after Twenty Years proceeding in *Chancery*, and above 1000 l. Charges spent by the Respondent, by the Appellants Vexatious Prosecution (to Her, and her five Childrens Ruine) the Appellants for further Vexation, have Appealed from the Decree pronounced upon the aforesaid Bill of Review, above Ten years since; Alledging,

First. That the Award aforesaid is set aside by Surprize, without consent of Parties or proof of any undue Means used in obtaining thereof.

Secondly. That the Appellants, *Gray* and *Haines* two of the Part-Owners in the said Ship *Rainbow*, were no Parties to the Decree; Nevertheless the Sum Reported due to the Respondent, is Decreed to be paid by them; Therefore, and forasmuch as *Staffords* Evidence was suppressed, and the Decree made only against the Appellants, who were but two of the five Part-Owners, with the said *Richard Fenton* in the said Ship: And Forasmuch as they Received never one peny of Money for the Freight of her, for the first two Voyages, but only for the Third, for which they were ready to Account.

Therefore pray a Reversal of the aforesaid Decree.

But the Respondent humbly Hopes for, and Prays the Justice of this most Honourable House, and then doubts not but to be Discharged from this Supreme Court, and receive all Costs for the Charge and Vexation she is put unto.

And, For Reasons for Dismissing the Appellants Appeal, this Respondent Humbly Offers.

That all the proceedings in the High Court of *Chancery*, have been and are Just and agreeable to Equity; and such as against which the Appellants ought not to expect Relief.

First. Because by Sir *John Coells* Report, It Appears, the Appellants did themselves undertake and agree to Account for, and make Good what should be due to the Respondent for the Freight aforesaid, and so no need to make other Parties which otherwise would have been done.

Secondly. It Appeared, the Awards before-mentioned were obtained on False Allegations, and by Surprize; And (as so procured) were justly set aside.

Thirdly. *Staffords* Evidence was set aside for very good Reason, it appearing he had sworn an Account to be Perused and Allowed by the Respondents Husband, whenas by Substantial Evidence it was made Appear, that he was Dead long before the Account was Writ; besides other Falsities.

Upon the whole Matter, the Respondent Humbly layes her self, and five Fatherless Children, with this her Sad and Deplorable Condition, at your Lordships Feet; And submits it to your Grave Judgment and Serious Consideration:

Whether, After two several Decrees of the High Court of *Chancery*, and Twenty Years Litigation, meerly upon Matters of Account; where Masters have since the Decree been Attended above 100 times upon those Accounts, and no Exceptions all that time taken to the Decree, nor any Appeal to this Honourable House from the same, till after four several Reports made, and those duly Confirmed; (after Exceptions put in thereto by the Appellants, were Argued) Whether, after all these Solemn proceedings, The Appellants, now finding that they are to pay this Respondent Money, (though not half so much as the Charges she hath been put unto for Recovering the same) They shall be admitted to Appeal to this most Honourable House to be Relieved, against a Decree to which themselves have submitted by all their Subsequent proceedings before the Master in that Court; Whereas if there had been any Just Cause of Complaint against the said Decree, they might have Appealed from the same before their proceeding to Account, which (it is Humbly Conceived) is no less than a Submission to the same, and owning it to be Just.